



2024 : DHC : 4100



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 387/2024

DEEPA MULWANI Petitioner

Through: Mr. S.S. Shastry, Mr. Rajesh Pandit, Mr. Brijest Tiwari and Mr. Subramaniam. K.R., Advocates

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Kavindra Gill, Advocate.
Ms. Anamika Ghai Niyazi, Mr. M.A. Niyazi,
Ms. Kirti Bhardwaj, Ms. Nehmat Sethi and
Mr. Arquam Ali, Advocates, for CBSE.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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17.05.2024

W.P.(C) 387/2024

1. This writ petition has been instituted by a candidate who undertook the Central Teacher Eligibility Test (CTET) conducted by the Central Board of Secondary Education (CBSE) on 20 August 2023.

2. The examination was in OMR¹ format.

3. *Vide* a notice issued on 15 September 2023, the CBSE provided the scanned copy of the attempted OMR sheet and the calculation

¹ Optimal Mark Recognition, which requires the questions are objective and multiple-choice based, and the correct answer is marked by the candidate by circling or otherwise identifying the block corresponding to the



sheets of the candidates on its website, accessible from 15 to 18 September 2023, with an option to the students to challenge the model answer key.

4. The petitioner alleges that, on scanning her OMR Sheet and the Calculation Sheet issued by the CBSE, she found that Option 2, selected by the petitioner against Question 2 in the examination, had been treated as incorrect, whereas according to the CBSE, the correct option was Option 3. Question 2, and the suggested answers below it, read thus:

“2. The approach to educating gifted children which moves them through curriculum at an unusually rapid pace is known as:

- (1) Differentiated instruction
- (2) Enrichment
- (3) Acceleration
- (4) Immersion”

5. According to the petitioner, both “Enrichment” and “Acceleration” are correct answers to the question that has been posed and, therefore, she was entitled to be awarded full marks for having selected Option 2 (“Enrichment”).

6. Mr. S.S. Shastry, learned Counsel for the petitioner, has placed reliance on Clause 2.5.5 of the National Education Policy (hereinafter referred to as “the NEP”), specifically to the following bullet point contained therein:

“• Bagless days will be encouraged throughout the *year for various types of enrichment activities* involving arts, quizzes,



sports, and vocational crafts”

(Emphasis supplied)

7. Mr Shastry also refers to Clause 2.3.4. of the NEP, which reads as under:

“2.3.4. Support for Gifted Students/Students with Special Talents

NCERT and NCTE will develop guidelines for the education of gifted children. B.Ed. programmes may also allow a specialization in the education of gifted children. Teachers will encourage students with singular interests and/or talents in the classroom *by giving them supplementary enrichment material* and guidance. Olympiads and competitions in various subjects will be conducted across the country. Online apps with quizzes, competitions, assessments, enrichment materials, and online communities for shared interests will be developed as group activities. Schools will develop smart classrooms, in a phased manner.”

(Emphasis supplied)

8. Additionally, Mr. Shastry has referred me to an article titled “Giftedness among School Children” authored by Kiran N C and C. G. Venkatesha Murthy, published in The International Journal of Indian Psychology from, which he specifically refers to the following para:

“[D] Educational programmes for the Gifted in India

In its report Indian Education Commission (1964-66) criticized segregation and hence did not have a favorable opinion to consider having separate education for gifted. Kothari Commission, made many valuable recommendations including a few about gifted-education. *It admitted the importance of enrichment programs and vacation programs.* Later In 1986 the government of India realized the need for widening horizons for rural talented students by establishing ‘Navodaya Vidyalayas’ which is now called ‘Jawahar Navodaya Vidyalayas’ in India. Quality, Social Equity and Excellence are the three pillars on which it was conceptualized. These are residential school located one in every district. All facilities are provided. Perhaps this is one of the most successful experiments in Education in India.



Perhaps, what needs to be explored here is to see whether the selected rural talented students are being nurtured to their full. Thus is an agenda before researchers in India.”

(Emphasis supplied)

9. From these references, Mr. Shastry would seek to submit that enrichment and acceleration are both methods of providing education to especially gifted children and that, therefore the respondent is not justified in treating “acceleration” alone as the correct answer to Question 2. Where there are two correct answers to a question, Mr. Shastry submits that students who attempt either of the correct choices should be awarded full marks.

10. That last proposition is, to my mind, unexceptionable. The CBSE is required to ensure that each question has only one correct answer. If, perchance, however, question *has* two correct answers, the students cannot be prejudiced thereby, and either of the correct answers should be accepted.

11. The respondent has filed a counter-affidavit, with which a report of the subject expert, to whom the petitioner’s case was referred for opinion, has been annexed. The report of the expert may be reproduced as under:

“Report of Subject Expert

Date of the Exam: 20.08.2023

Subject: Child Development and Pedagogy

Paper: I

Booklet Code- A



Question No. 2

The approach to educating gifted children which moves them through curriculum at an unusually rapid pace is known as:

1. Differentiated Instruction
2. Enrichment
3. Acceleration
4. Immersion

Correct answer marked by CBSE-Option 3 Acceleration
Answer claimed by the candidate- Option 2 Enrichment

Response to the supporting evidence provided by the candidate

All the documents supplied by the candidate including the policy documents of National Education Policy 2020 do not define or elaborate upon the various strategies mentioned in the options cited above. The documents only indicate that both enrichment and acceleration are key strategies to cater to the specific needs of gifted children which is correct. However, they do not indicate the nuanced difference between the two key strategies. Both the strategies are different and the following extracts from two widely recognized books of educational psychology clarify the same.

Evidence from recognized books to support correct option no. 3

The evidence from relevant study materials to justify option no. 3 as the correct option is as follows:

"Some educators believe that students who are gifted should be accelerated moved quickly through the grades or through particular subjects. Other educators prefer enrichment, giving the students additional, more sophisticated, and more thought-provoking work but keeping them with their age-mates in school". (Woolfolk, p-183)

Woolfolk A. Vij, S. (2019). Pearson India Education Services: Uttar Pradesh

"Programs for students who are gifted and talented are usually based on either **acceleration**, which keeps the curriculum the same but allows students to move through it more quickly or **enrichment** which provides alternate instruction" (Eggen, p-151) Eggen, P. Kauchak, D. (2010)



Educational Psychology: Windows on Classroom. Pearson Education Inc.: New Jersey.

Apart from these two references any reliable source (including web resources) that differentiates between acceleration and enrichment in the context of education of gifted children would categorically state the explanations cited above. It is important to underline that the question does not ask which of the strategies is effective for gifted children (in which case option 2 would also be correct) but asks the candidate to choose a strategy whose characteristic is specified clearly in the question.

Sd/-
(Signature of the Subject Expert)”

12. Mr. Shastry draws my attention to the extract from the article of Eggen. P. Kauchak. D., in the afore-extracted report of the subject expert. He points out that this extract also refers both to acceleration and enrichment.

13. I have, in *Om Prakash Verma v. National Testing Agency*², examined the legal position with respect to the scope of interference under Article 226 of the Constitution of India, with answer keys suggested in examinations, especially those held on a national level. After considering the decisions in *Manish Ujwal v. Maharishi Dayanand Saraswati University*³, *Guru Nanak Dev University v. Saumil Garg*⁴, *Rajesh Kumar v. State of Bihar*⁵, *Ran Vijay Singh v. State of U.P.*⁶, *Rishal v. Rajasthan Public Service Commission*⁷ and *U.P.P.SC v. Rahul Singh*⁸ as well as the decisions cited in the said

² 2024 SCC OnLine Del 909

³ (2005) 13 SCC 744

⁴ (2005)13 SCC 749

⁵ (2013) 4 SCC 690

⁶ (2018) 2 SCC 357

⁷ (2018) 8 SCC 81

⁸ (2018) 7 SCC 254



authorities, I have found that the applicable principles are the following:

“(i) Circumspection is the general rule, especially where experts have considered the objections raised to the answer key.

(ii) It is, however, equally the rule that there is no absolute proscription against Courts examining the challenge to the key answers, even where experts have opined. The law does not commend, or even recommend, a "hands off" approach.

(iii) In an appropriate case, the Court can even examine, for itself, the correctness of the key answers under challenge, in which process the Court is also empowered to refer to authoritative textbooks on the subject, especially those which form part of the students' curriculum.

(iv) Where the question is simple, and not admitting of any complexity, and can command only one answer, which is apparent to the Court, the Court is not proscribed from taking a view based on its own perception of the question - to take an extreme example, the sum of two and two. That, however, would have to be in a rare case in which the answer is so apparent that there can be no doubt about it, and not one where the opinion of someone with greater expertise would help, or where there is ambiguity.

(v) In any case, the guiding principle is that the general rule against accepting the suggested answer key stands relaxed only where the suggested answer is proved to be wrong, not by an inferential process of reasoning or rationalisation, but clearly and demonstrably wrong, in that no reasonable body of men well-versed in the subject would regard the key answer as correct.

(vi) Another guiding principle, which the Court was required to bear in mind in such cases, is that, where it was beyond doubt that the key answer was wrong, it would be unfair to penalize students for not giving the suggested, demonstrably wrong answer. Any refusal on the part of the Court to interfere, even in such a case, would amount to a serious illegality.

(vii) Where questions were unacceptably vague, the principle advocated in Saumil Garg is required to be followed. Any student who attempted all or some of said vague questions would be entitled to be marked out of a total after deleting the marks assigned to the questions which she, or he, had attempted.



(viii) Even where a large number of key answers were found to be incorrect - as in Rajesh Kumar, which involved 45 wrong key answers out of 100 - it would not be justifiable to direct cancellation and reholding of the examination. Re-evaluation of the papers on the basis of the corrected answer keys would still be the only correct approach.

(ix) Interference has, therefore, to be only in "rare and exceptional cases", and to a "very limited extent".

(x) In the event of doubt, the benefit of doubt would go to the examining authority, not to the candidate.

(xi) The general principle is that relief cannot be restricted to the candidates who approached the Court, but must be extended to all who are similarity situated. While so doing, the Court can direct that the re-evaluation, or revaluation, would not result in any negative impact on candidates who had attempted the disputed questions and whose answers corresponded to the suggested answer key."

14. In general, one may say that the Court may interfere with the suggested answer key in a case where there is absolutely no doubt that the suggested answer key is incorrect. If the model answer key says that the sum of two and two is three, it can obviously not be accepted. Similarly, where there is unambiguous evidence to indicate that the answer suggested by the examining authority is not necessarily only the correct answer, the Court may accept the aggrieved candidate's contention.

15. The court, however, has to be extremely circumspect in these matters. Often it is seen that the questions are so worded as not merely to test the knowledge of the student, but her perspicacity, and her ability to understand exactly what the question requires. There may be situations in which there is a hair's breadth of a difference between the aptness, to the question asked, of one or more of the



suggested answer options. In such cases, unless the view adopted by the examining authority or the experts concerned in that regard is completely unacceptable, the Court must defer to their wisdom and decision. This follows from the principle that, where there is the possibility of more than one opinion, it does not fall within the province of jurisdiction of the writ court under Article 226 of the Constitution of India, to interfere with the decision of the authority on the ground that according to the writ court, one option is more appropriate than the other.

16. As Ms. Anamika Ghai, learned Counsel for the CBSE, correctly points out, the question is cautiously worded, and does not refer to the approach to be adopted for educating gifted children. It refers specifically to the approach to educating gifted children, *which results in moving them through the curriculum at an unusually rapid pace.*

17. The literature to which Mr. Shastry drew my reference, while it definitely refers to enrichment as one of the modes of educating gifted children, does not necessarily indicate that the approach to educating the gifted children *resulting in their being moved through the curriculum at an unusually rapid pace* is referred to as enrichment. Though this court is no expert in such matters, in common parlance, moving at an unusually rapid pace partakes is somewhat synonymous to acceleration.

18. Insofar as the report of the subject expert, filed by the respondents with the counter affidavit is concerned, the article



authored by Eggen. P. and Kauchak. D, to which Mr. Shastry draws my attention, would actually seem to support the case of the respondent rather than that of the petitioner. The passage extracted from the said article reads thus:

“Programs for students who are gifted and talented are usually based on either **acceleration**, which keeps the curriculum the same but allows students to move through it more quickly or **enrichment** which provides alternate instruction” (Eggen. p-151) Eggen. P. Kauchak. D. (2010) Educational Psychology: Windows on Classroom. Pearson Education Inc.: New Jersey.”

19. A reading of these passages clearly indicates that, even in the opinion of the learned authors Eggen. P. *et al*, the program which keeps the curriculum the same and allows students to move through the curriculum quickly is known as acceleration whereas enrichment refers to the method of providing alternate instruction. As such, in view of the expressed wording of Question 2 of the CTET, the decision of the examiner that the appropriate response was “acceleration”, rather than “enrichment”, cannot be faulted.

20. Within the limited peripheries of the jurisdiction of this Court vested by Article 226 of the Constitution of India, it is not possible for this Court to hold, in the facts of the present case, that the respondent’s decision to treat Option 3 (acceleration) as the only correct answer, suffers from any such infirmity as would invite interference under Article 226 of the Constitution of India.

21. Ms. Anamika Ghai also seeks to point out that the petitioner did not object to the suggested answer key within the period of three days,



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provided by the CBSE in that regard *vide* Public Notice dated 15 September 2023.

22. Though Mr. Shastry seeks to rely, *per contra*, on another Public Notice dated 9 October 2023 issued by the CBSE in this regard, as this Court has found on merits that the petitioner is not entitled to the relief, it is not entering into this aspect.

23. For all the aforesaid reasons, this writ petition is dismissed, with no orders as to costs.

C.HARI SHANKAR, J

MAY 17, 2024

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[Click here to check corrigendum, if any](#)